

REMARKS

Reconsideration of this application, as amended, is requested. Claims 1, 8 and 12-25 remain in the application. Claims 2-7 and 9-11 were canceled previously. Independent claims 1 and 8 each have been amended to define the invention more clearly. Limitations added to claims 1 and 8 are similar to limitations that had been in claims 22 and 23 prior to this Amendment. Claims 22 and 23 have been amended to avoid redundancy with the language presented in amended claims 1 and 8. New dependent claims 24 and 25 have been added.

The applicants and the assignee are pleased to note that the Amendment of January 11, 2007 was considered to overcome the objections and rejections of claims 8 and 14-17 under 35 USC 112, second paragraph.

The Examiner raised new formal objections to dependent claims 22 and 23 in view of minor spelling mistakes. Amended claims 22 and 23 overcome those objections.

Claims 1, 8 and 12-21 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,635,041 to Popp et al. The Examiner identified the elements shown in the Pop et al. reference that were considered to correspond to claims 1, 8 and 12-21 as existing prior to this amendment.

As noted above, independent claims 1 and 8 have been amended to incorporate limitations that previously were in claims 22 and 23. Claims 22 and 23 were not subject to the anticipation rejection based on the Popp et al. reference.

Claims 22 and 23 were rejected under 35 USC 103(a) as being obvious over Popp et al. considered in view of U.S. Patent No. 4,892,536 to DesMarais et al. The Examiner acknowledged that the Popp et al. reference does not teach "the raised portion

in the divergent portion being raised by the action of the contractile force of the primary elastic members." However, the Examiner turned to the DesMarais et al. reference in an effort to overcome this admitted deficiency of Popp et al. The Examiner concluded that the DesMarais et al. reference teaches a disposable wearing article having a central zone of a skin-side surface of a cover sheet between right and left primary elastic portions formed as a raised portion by action of the contractile force of the primary elastic members in the divergent portion independent of forces exerted by the wearer.

The newly cited Popp et al. reference is directed to an absorbent garment with asymmetrical leg elastic tension. As noted by the Examiner, the Popp et al. absorbent garment has three left leg elastic members 58 and three right leg elastic members 58 disposed adjacent the left and right edges of the garment. The leg elastic members 58 are configured, as their names imply, to elastically engage portions of the respective left and right legs adjacent to the torso. The Examiner has noted correctly that each of the leg elastic members has a linear portion and front and rear divergent portions. The Popp et al. reference does not comment on the formation of divergent raised portions, and indeed such divergent raised portions do not appear to be provided by the Popp et al. reference. In this regard, the Examiner will note that there are two parallel linear members disposed symmetrically between the left leg elastic members 58 and the right leg elastic members 58. The parallel linear members extend farther in forward and rearward directions than any of the leg elastic members 58. The Popp et al. reference does not discuss the construction or function of these two parallel linear members. However, the two centrally disposed parallel linear members are depicted graphically in the same manner as the left and right leg elastic members 58. These two parallel linear members between the arrays

of left and right leg elastic members 58 would prevent the formation of a divergent raised portion forward or rearward of any linear raised portion that arguably is provided by Popp et al.

The Examiner appears to have appreciated the deficiencies of Popp et al. with respect to the suggestion of a raised divergent portion as set forth in previously presented claims 22 and 23. Accordingly, the Examiner turned to the DesMarais et al. reference in an effort to address this deficiency of Popp et al. In this regard, the Examiner noted that the DesMarais et al. reference has V-shaped elastic strands 28 that the Examiner believes would form the divergent raised portion recited in previously presented claims 22 and 23.

The DesMarais et al. reference is directed to an absorbent article (i.e., diaper) having a passageway 26 extending entirely therethrough at a location symmetrically disposed between the left and right side edges. Two elastic strands 28 extend from a position forward of the passageway 26 towards the front end of the diaper and diverge from one another at positions closer to the front end. However, the V-shaped arrangement of elastic strands 28 clearly are not divergent portions extending from an approximately linear portion of a primary elastic member. In fact, the existence of the passageway 26 would prevent the DesMarais et al. diaper from having linear portions extending rearwardly from the diverging elastic strands 28 and certainly would prevent the formation of a linear raised portion by an action of a contractile force in the elastic members. Furthermore, the elastic strands 28 of DesMarais et al. clearly do not provide a divergent raised portion, but rather are provided to accommodate the male genitalia without abrasion or irritation. Thus, the V-shaped arrangement of elastic strands 28 and

the passageway 26 where there is no absorbent body or raised portion would appear to teach away from the claimed invention.

It is not clear how or why the skilled artisan would combine the teaching of Popp et al. and DesMarais et al. In this regard, the office action acknowledges that the Popp et al. reference does not have primary elastic members arranged and configured to form both a linear raised portion therebetween and a divergent raised portion as set forth in previously presented claims 22 and 23 and in amended claims 1 and 8. The DesMarais et al. reference requires the through passageway 26 that would clearly prevent the formation of a linear raised portion and further requires an arrangement of elastic members 28 to form a region for accommodating male genitalia. Thus, neither reference provides a divergent raised portion contiguous with a linear raised portion formed by the action of the contractile forces of the primary elastic members, and neither also could not provide such a structure.

In contrast to the hypothetical combination of Popp et al. and DesMarais et al., the invention defined by the amended claims herein has right and left primary elastic members bonded in their stretched state to the cover sheet of the claimed disposable wearing article. Each of the primary elastic members has an approximately linear portion in an approximately laterally central zone to allow a central zone of the absorbent body between the right and left primary elastic members to be formed as a linear raised portion by an action of a contractile force in the approximately linear portions of the elastic members and independent of forces exerted by a wearer. Additionally, the amended claims herein further define each of the elastic members as having "at least one divergent portion extending from the approximately linear portion towards at least one of the front

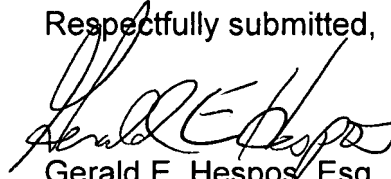
and rear ends." The divergent portions extend outwardly from the linear portions of the primary elastic members "to define at least one divergent pattern." With this claimed arrangement, a divergent zone of the skin-side surface of the absorbent body (claim 1) or the cover sheet (claim 8) "in the divergent pattern is formed as a divergent raised portion by an action of a contractile force in said divergent portion." Additionally, and significantly, the divergent raised portion is contiguous with the linear raised portion. This unique arrangement defined very clearly by the amended claims facilitates a close fit of the absorbent body or the cover sheet to the body of the wearer. The hypothetical combination of Popp et al. and DeMarais et al. clearly does not teach or suggest this structure and clearly would not achieve this unique and important function. For the preceding reasons, it is submitted that the invention defined by amended independent claims 1 and 8 and their dependent claims are not taught or suggested by Popp et al. considered in view of DeMarais et al.

New claims 24 and 25 have been added and depend respectively from amended claims 1 and 8. New dependent claims 24 and 25 define that there are no elastic members bonded in their stretched state to the cover sheet between the left and right primary elastic members. The prior art clearly does not teach or suggest this aspect of the claimed invention.

In view of the preceding amendments and remarks, it is submitted that the claims remaining in the application are directed to patentable subject matter, and allowance is solicited. The Examiner is urged to contact applicants attorney at the number

below to expedite the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald E. Hespos", written over the printed name.

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